

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

NICHOLAS SCOTT STONE,

Plaintiff,

v.

CDC OFFICERS, *et al.*,

Defendants.

Case No. 1:24-cv-00253-BAM (PC)

ORDER TO SHOW CAUSE WHY ACTION  
SHOULD NOT BE DISMISSED AS  
DUPLICATIVE

(ECF No. 1)

**TWENTY-ONE (21) DAY DEADLINE**

Plaintiff Nicholas Scott Stone (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on February 26, 2024. (ECF No. 1.) Plaintiff’s complaint is currently before the Court for screening.

**I. Screening Requirement and Legal Standard for Duplicative Lawsuits**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2)(B)(ii).

Duplicative lawsuits filed by a plaintiff proceeding *in forma pauperis* are subject to dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). *See, e.g., Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *McWilliams v. State of Colo.*, 121 F.3d 573, 574 (10th Cir. 1997); *Pittman v. Moore*, 980 F.2d 994, 994–95 (5th Cir. 1993); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). An *in forma pauperis* complaint that merely repeats pending or

1 previously litigated claims may be considered abusive and dismissed under § 1915. *Cato*, 70  
 2 F.3d at 1105 n.2; *Bailey*, 846 F.2d at 1021. “Dismissal of the duplicative lawsuit, more so than  
 3 the issuance of a stay or the enjoinder of proceedings, promotes judicial economy and the  
 4 comprehensive disposition of litigation.” *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 684,  
 5 688, 692–94 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904  
 6 (2008).

7 To assess whether a claim is duplicative, courts use the test for claim preclusion. “Thus,  
 8 in assessing whether the second action is duplicative of the first, we examine whether the causes  
 9 of action and relief sought, as well as the parties or privies to the action, are the same.” *Adams*,  
 10 487 F.3d at 689 (citations omitted). “Plaintiffs generally have no right to maintain two separate  
 11 actions involving the same subject matter at the same time in the same court and against the same  
 12 defendant.” *Id.* at 688 (internal quotations and citations omitted).

## 13 **II. Plaintiff’s Allegations**

14 Plaintiff is currently housed at California Correctional Institution in Tehachapi, California,  
 15 where the events in the complaint are alleged to have occurred. Plaintiff names as defendants:  
 16 (1) CDC Officers; (2) CDC Medical Staff; and (3) Tehachapi Hospital.

17 Plaintiff alleges as follows:

18 The yard was ordered “down,” and Plaintiff and everyone else complied. As Plaintiff was  
 19 in the prone position, spread out and face down, he was struck on the top of his head with a 40  
 20 mm round. When yard was recalled, Plaintiff was ordered to walk back to his unit. Plaintiff was  
 21 unable to see correctly and bleeding profusely from the top of his head. Plaintiff’s medical needs  
 22 were ignored by approximately 15 CDC Officers and 5 medical staff. Plaintiff was placed in his  
 23 cell and told medical would come and check on him. Medical never treated Plaintiff.

24 Plaintiff was shot around 10:00 a.m., and around 5:30 p.m. at dinner, Plaintiff had to alert  
 25 staff by going “man down.” Plaintiff was then taken to prison medical, where he was held for  
 26 several hours until it was discussed by staff how it would be written up. This is when Plaintiff  
 27 objected and said “I don’t care how you figure it out, I need to go to the hospital.” (ECF No. 1, p.  
 28 5.) Plaintiff stated he just had brain surgery for the exact same thing.

1 Plaintiff requests the following relief: corrective surgery and compensation for pain and  
2 suffering.

3 **III. *Stone v. Jane Doe, et al.*, Case No. 1:24-cv-00191-EPG (PC)**

4 On February 12, 2024, Plaintiff filed *Stone v. Jane Doe, et al.*, Case No. 1:24-cv-00191-  
5 EPG (PC) ("*Stone I*").<sup>1</sup> The complaint filed in *Stone I* includes two claims. Plaintiff names as  
6 defendants: (1) Imad Abumeri, surgeon at Kern Nero Institute; (2) John Doe CDC Officers,  
7 California Correctional Institution; (3) Jane Doe CDC Medical Nurses, California Correctional  
8 Institution; (4) Jane Doe Nurses, Tehachapi Hospital; and (5) Jane Doe Nurses, Bakersfield  
9 Advantage.

10 In Claim I, Plaintiff alleges that around 10:00 a.m., while on the yard at Tehachapi CCI  
11 prison, the yard was ordered down. While Plaintiff was in the prone position, he was struck in the  
12 head by a 40 mm round. The round cut Plaintiff's head open, and left him in a dazed state. This  
13 is the 2nd time he's been shot directly in the head. When the yard was ordered up, inmates were  
14 ordered back to their housing unit. In his daze, Plaintiff walked past several staff, both medical  
15 and officers, bleeding profusely. Plaintiff was then searched by officers. This is when Plaintiff  
16 made it clear he had a medical emergency. Officers told Plaintiff that they would send medical  
17 for him. Around 8 hours later at dinner, Plaintiff advised 3rd watch staff he would be going man  
18 down. When asked what happened, Plaintiff stated he was shot in the head that morning.  
19 Plaintiff sat for another 4 hours in medical until the call to send him to a higher level of medical  
20 care was made, due to the past injury to his head from a 40 mm round and brain surgery. Plaintiff  
21 was treated at the hospital with staples and a CT scan. The prison did no force report. The  
22 Tehachapi hospital did the only report of the injury. Plaintiff has requested these reports but has  
23 been denied. Plaintiff filed several 602s with no response. OIA was called but said Plaintiff  
24 refused the interview, which is false. (*Stone I*, Compl., Docket No. 1, pp. 3–4.)

25 In Claim 2, Plaintiff alleges that this claim relates to the first time he was shot, and  
26 surgery was performed after over 12 hours without proper medical care. Dr. Abumeri and staff  
27 alerted Plaintiff that he would need brain surgery. Dr. Abumeri told Plaintiff, and the contract

28 <sup>1</sup> The Court takes judicial notice of the files in that case. Fed. R. Evid. 201.

1 stated, there would be a small scar on the left side of head. This is not what took place.  
2 Additional things were done, which left Plaintiff deformed. CDC officers had an obligation to  
3 see Plaintiff was given proper medical treatment. Dr. Abumeri extremely botched the head  
4 surgery, leaving multiple deformities in the skull and on the head itself. He has changed the right  
5 side of Plaintiff's face completely. (*Stone I*, Compl., Docket No. 1, p. 4.)

6 **IV. Discussion**

7 The allegations in Claim 1 of the complaint in *Stone I* are nearly identical to the  
8 allegations in the complaint filed in the instant action. Both cases include unnamed correctional  
9 officers, correctional medical staff, and staff at Tehachapi hospital as the defendants pertinent to  
10 the claim. In both cases, Plaintiff alleges the same claim: that he was shot in the head with a 40  
11 mm round while lying prone in the yard, was ignored by correctional officers and correctional  
12 medical staff even though he was bleeding profusely, had to go man down after not receiving  
13 medical attention for hours, and then waited for several more hours before being sent to the  
14 hospital for additional care because of his prior injury and brain surgery.

15 Therefore, the Court finds that this case is duplicative of Plaintiff's prior current pending  
16 case because the claims, parties, and requested relief do not significantly differ between the two  
17 actions.

18 **V. Order**

19 Based on the foregoing, it is HEREBY ORDERED that Plaintiff show cause why this  
20 action should not be dismissed as duplicative within **twenty-one (21) days** of the date of service  
21 of this order. **Failure to comply with this order will result in dismissal of this action, with**  
22 **prejudice, as duplicative.**

23  
24 IT IS SO ORDERED.

25 Dated: March 12, 2024

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
28